

## D. Feuerstein

1 Q. In any test, was the repeller  
2 ever placed in chamber B? So in other  
3 words --  
4 MR. WING: Asked and  
5 answered.  
6 Q. Yes, and forgive me if this was.  
7 I think you might have testified about  
8 this, but I don't have access to the  
9 complete record right now, and I can't  
10 completely remember.  
11 A. Okay.  
12 Q. I think that you previously  
13 testified that the repeller was never  
14 switched from chamber A to chamber B when  
15 conducting the test?  
16 A. Never, mm-hm.  
17 Q. Now, you testified earlier that  
18 Intertek, you supplied some SGS reports to  
19 Intertek for purposes of formatting; is  
20 that correct?  
21 A. Also I helped them to understand  
22 how to do the testing because this is not  
23 easy testing without understanding. A lot  
24 of lab probably won't be able to do it.  
25 Q. So if we are comparing

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1 Exhibits 18 and 19, so on Exhibit 18, I am  
2 looking at page 88 and on page 19, I am  
3 looking at page 1533.  
4 A. Okay.  
5 Q. So you see the heading "Test  
6 Object" on Exhibit 18 and the heading of  
7 "Object" on Exhibit 19, do you see that?  
8 A. Yes.  
9 Q. So see Exhibit 18, it says:  
10 Test: Ultrasonic pest repellers against  
11 rats and mice in a laboratory environment,  
12 conducted observations. Control: Eleven  
13 days period, including two days  
14 preliminary testings seven days during  
15 test and two days post test.  
16 And do you see that on  
17 Exhibit 18?  
18 A. Yes.  
19 Q. And do you see on Exhibit 19, it  
20 says tests Bell + Howell Ultrasonic Pest  
21 Repeller against rats and mice in total  
22 eleven days period including two days  
23 preliminary tests, two days during test  
24 and two days post tests, did you see that?  
25 A. Yes.

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1 Q. Do you agree that it appears  
2 that this language was copied?  
3 MR. WING: Object to form.  
4 A. But this is part of the  
5 protocol.  
6 Q. Okay.  
7 A. They are just repeating the  
8 protocol.  
9 Q. So do you believe that this  
10 language was copied from SGS?  
11 MR. WING: Object to form.  
12 A. I don't think it's a copy. I  
13 think it's in our protocol.  
14 Q. So this was in a protocol that  
15 you submitted to the labs?  
16 A. Yes.  
17 Q. Do you have documents reflecting  
18 the protocol that you submitted to the  
19 lab?  
20 A. I don't have myself, because my  
21 people, my -- my factory in China are the  
22 one who submit the information for the lab  
23 to quote.  
24 Q. So do Intellitec employees have  
25 documents reflecting this protocol?

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1 A. Yes. Without clear protocol,  
2 they won't be able to quote how much it  
3 will cost for them to conduct this  
4 testing.  
5 Q. Understood.  
6 MR. KOPEL: Scott, I am just  
7 going to make a quick formal request  
8 on the record for production of those  
9 records.  
10 Q. So just very briefly, there are  
11 sections in both of these reports titled  
12 "Preliminary Testing," and it's actually  
13 on page 1534 Exhibit 19, and on page 88,  
14 Exhibit 18?  
15 A. Sorry, 18 which page?  
16 Q. Eighteen is page 88?  
17 A. Eighty-eight, okay.  
18 Q. And 19 is page 1534.  
19 A. Okay.  
20 Q. And I just wanted to confirm,  
21 that's the same thing, right? You agree  
22 that this language does mirror each other  
23 from report to report, correct?  
24 A. This is actually -- let me see,  
25 I think this is part of the protocol we

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1 provided for -- for them. The pictures on  
 2 the top, it's actually designed -- draw by  
 3 my designer. So they actually took the  
 4 section of the protocol into the report.  
 5 Q. I just wanted to confirm that.  
 6 They drew this language from the protocol  
 7 that you provided to them, right?  
 8 A. Correct, yes.  
 9 Q. And if you look at the graphs  
 10 that are depicted on each of the exhibits,  
 11 for instance, page 91 on Exhibit 18 and on  
 12 Exhibit 19, page 1537, these graphs appear  
 13 to be formulated the same, correct?  
 14 A. Yeah, they are similar format,  
 15 but the test results are different between  
 16 two different labs.  
 17 Q. Thank you.  
 18 Turning specifically to  
 19 Exhibit 19, this was a test of rats and  
 20 mice, correct?  
 21 A. Correct.  
 22 Q. Can you tell me what species  
 23 rats or what species mice were used?  
 24 A. I don't know. Depends on the  
 25 season. So I don't know the species of

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1 the rats and -- and mice.  
 2 Q. Can you please turn to  
 3 page 1537?  
 4 A. (Complying.) Yes.  
 5 Q. Do you see at the top of the  
 6 page, there is a graph depicting rat  
 7 movement? So it says "rats" in the  
 8 left-hand corner of the graph on  
 9 page 1537?  
 10 A. Rats? Yes.  
 11 Q. Do you see on April 9, 2016, it  
 12 appears that there was three rats in  
 13 chamber A and 17 rats in chamber B?  
 14 A. April 9th?  
 15 Q. Yes.  
 16 A. Yes.  
 17 Q. Was that also a coincidence that  
 18 these rats showed a strong preference for  
 19 chamber B?  
 20 MR. WING: Object to form.  
 21 Q. You can answer.  
 22 A. Yes, that's also coincidence.  
 23 Q. And if it had been twenty in  
 24 chamber B and zero in chamber A, would  
 25 that be a coincidence, as well?

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1 A. Correct.  
 2 Q. Okay, thank you.  
 3 A. For the first two days, correct.  
 4 Q. You can please put Exhibits 18  
 5 and 19 to the side.  
 6 A. Okay. (Complying.)  
 7 MR. KOPEL: I will ask the  
 8 court reporter to please mark as  
 9 Exhibit 20, a document bearing Bates  
 10 numbers BHH, LLC 002509 to 2580.  
 11 (Plaintiffs' Exhibit 20 was  
 12 marked for identification, as of this  
 13 date.)  
 14 Q. Ms. Feuerstein, just let me know  
 15 when you are ready.  
 16 A. (Reviewing exhibit.) Yes.  
 17 Q. Do you have Exhibit 20?  
 18 A. Yes.  
 19 Q. Have you seen it before?  
 20 A. Yes.  
 21 Q. What is it?  
 22 A. It's several test reports we  
 23 have for the petitions repeller.  
 24 Q. Who ran these reports?  
 25 A. Let me see. SGS and Intertek.

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1 Q. Do you know the species of pests  
 2 tested in any of these tests?  
 3 A. No, I don't know.  
 4 Q. Perhaps to save us time, do you  
 5 not know the species of any of the tests  
 6 that you produced, do you know the species  
 7 of that animal tested, any of them?  
 8 A. No.  
 9 Q. Can you please turn to  
 10 page 2531?  
 11 A. (Complying.)  
 12 Q. Can you identify what type of  
 13 test this is?  
 14 A. This is the pest test conducted  
 15 by SGS in 2012 for spiders, roaches and  
 16 ants.  
 17 Q. And who is Mai LV?  
 18 A. I don't know them, but I assume  
 19 it's the personnel who issued a report in  
 20 SGS.  
 21 Q. So you don't specifically know  
 22 this individual?  
 23 A. I don't know this individual.  
 24 Q. Or what her qualifications or  
 25 background is, correct?

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1 A. No.  
 2 Q. Do you see on page 2531, at the  
 3 bottom, there is a section entitled  
 4 Comments/Remarks?  
 5 A. Yes.  
 6 Q. Do you see the first one says:  
 7 Cancelled bread and white granulated sugar  
 8 as food for spiders on 12 March 2012 as  
 9 spiders were not eating and drinking?  
 10 A. Yes, I read that.  
 11 Q. So your understanding that  
 12 spiders don't eat bread and white  
 13 granulated sugar as food?  
 14 MR. WING: Object to form.  
 15 A. Well, I guess from this test,  
 16 that it found out Spider doesn't eat sugar  
 17 and bread.  
 18 Q. Did the initial protocol that  
 19 you submitted to SGS call for feeding the  
 20 spiders bread and white sugar?  
 21 A. No. No protocol we did not  
 22 specify any food in the protocol.  
 23 Q. Did you specify that food should  
 24 be put out?  
 25 A. Yes, we specify food and water

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1 should be put out.  
 2 Q. But you did not select what  
 3 food?  
 4 A. No, we did not select what food.  
 5 So --  
 6 Q. Who -- oh, go ahead.  
 7 A. When my -- when my factory  
 8 prepared the pests for testing, I guess  
 9 they -- I'm sure they asked the advice of  
 10 the pest supplier what would be the  
 11 appropriate food to feed them.  
 12 Q. So who -- I'm sorry, who asked  
 13 the pest supplier this question?  
 14 A. 2012, at that time it's our  
 15 factory in charge contact the pest supply  
 16 so that when they purchase the pests,  
 17 nobody would ask what would be the  
 18 appropriate food to feed the pests to keep  
 19 them alive.  
 20 Q. So the pest supplier said you  
 21 should feed them bread and granulated  
 22 sugar?  
 23 MR. WING: Object to form.  
 24 A. That I don't know, because I  
 25 wasn't in that conversation, I don't know.

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1 Q. Now, if the spiders don't eat  
 2 and drink, then they'll die, correct?  
 3 A. Probably. I don't know. And I  
 4 don't know how fast will they die without  
 5 food. But cancel bread. According my  
 6 understanding, I'm sure they switched  
 7 food. So you see the spiders stay alive  
 8 during the testing.  
 9 Q. Right. Now, why did you decide  
 10 to include food in the protocol for this  
 11 test and the other tests?  
 12 A. Otherwise they die during the  
 13 testing.  
 14 Q. So you decided to include equal  
 15 amounts of food in chamber A and  
 16 chamber B, correct?  
 17 A. Yes.  
 18 Q. And if you put out the wrong  
 19 food for spiders, they are going to die if  
 20 they are not going to eat the food?  
 21 A. They cancel right away two days  
 22 after, and I'm sure they switched to other  
 23 food.  
 24 Q. Of course, but that's the reason  
 25 for the switch, otherwise they would die?

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1 A. Yes, we worry about the pests  
 2 die during the testing, that will affect  
 3 our result.  
 4 Q. Was anyone at Intellitec aware  
 5 that spiders did not eat bread and white  
 6 granulated sugar before this?  
 7 MR. WING: Object to form.  
 8 A. I'm sure they informed us during  
 9 the testing, SGS.  
 10 Q. SGS informed you during the  
 11 testing?  
 12 A. Yes. When -- every time when  
 13 they're there, we had people onsite, so  
 14 I'm sure the people, Intellitec  
 15 representative was informed by SGS, the  
 16 spiders not eating the food, yeah.  
 17 Q. But SGS didn't inform anybody at  
 18 the beginning of the experiment; they  
 19 informed that --  
 20 A. Two days after.  
 21 Q. -- once that was observed?  
 22 A. Correct, yes.  
 23 Q. So no one knew that prior to 23  
 24 of March 2012, that this was the incorrect  
 25 food for spiders, right?

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1 MR. WING: Object to form.  
 2 A. I guess so.  
 3 Q. Can you please turn to  
 4 page 2533?  
 5 A. (Complying.) Yes.  
 6 Q. Sorry, I think I am going to  
 7 reconsider the question I was about to ask  
 8 you on that page.  
 9 In regards to the May 2016 tests  
 10 that we looked at earlier in Exhibits 18  
 11 and 19, if you recall?  
 12 A. Okay.  
 13 Q. Who requested that those tests  
 14 be performed?  
 15 A. Eighteen and 19? I request them  
 16 to do the testing. I request my factory  
 17 to come to the laboratories to conduct new  
 18 testing.  
 19 Q. Why did you feel it was  
 20 important to conduct new testing at that  
 21 point?  
 22 A. Because we are in pest repeller  
 23 business. It's always important to keep  
 24 continue doing the testing.  
 25 Q. Was there anything different

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1 about these tests than in past tests you  
 2 had already run?  
 3 A. For the 2016 one, the  
 4 difference, the major difference that we  
 5 do the video recording for both Intertek  
 6 and SGS. The previous one did not have  
 7 the recording.  
 8 MR. KOPEL: Scott, do you  
 9 still anticipate producing those  
 10 videos?  
 11 MR. WING: I'm still working  
 12 on getting the format correctly so I  
 13 can view them or produce them to you  
 14 in a viewable format.  
 15 MR. KOPEL: Will Defendants  
 16 stipulate to the authenticity of those  
 17 videos?  
 18 MR. WING: Once I've got them  
 19 correct, yes, we will stipulate to  
 20 them, the authenticity.  
 21 Q. Did Mr. Mishan or anyone else at  
 22 Bell + Howell request that you run those  
 23 tests in 2016?  
 24 A. They did not request, but I have  
 25 discussed we are going to run the test,

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1 they are going to run the new testing.  
 2 Q. Do you know if the decision to  
 3 run the tests was related in any way to  
 4 ongoing litigation concerning products?  
 5 A. No. No. We run the test in  
 6 almost every other year or every year  
 7 since two thousand and -- 2008.  
 8 Q. Thank you. You can put that  
 9 exhibit aside, as well, please.  
 10 A. (Complying.)  
 11 MR. KOPEL: I would like to  
 12 ask the court reporter to please mark  
 13 as Exhibit 21, a document bearing  
 14 Bates number BHH, LLC 001545 to 1554.  
 15 (Plaintiffs' Exhibit 21 was  
 16 marked for identification, as of this  
 17 date.)  
 18 Q. Do you have Exhibit 21?  
 19 A. Yes.  
 20 Q. Have you seen it before?  
 21 A. Yes.  
 22 Q. What is it?  
 23 A. It's a test report from SGS.  
 24 Q. What kind of pests are being  
 25 tested in this report?

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1 A. These are test report -- this is  
 2 test report to ants, spiders and roaches  
 3 in 2016.  
 4 Q. Were mice tested in this report?  
 5 A. That's a separate report. Mice  
 6 and rat are tested in a separate report.  
 7 Q. So this test did not look at  
 8 mice and rats, correct?  
 9 A. No.  
 10 Q. Can you please turn to  
 11 page 1548?  
 12 A. (Complying.) Yes.  
 13 Q. This is a paragraph entitled:  
 14 Observation of Repellency During Testing.  
 15 Do you see that?  
 16 A. Yes.  
 17 Q. Do you see: Release 50 percent  
 18 of ants, spiders, roaches in chamber A and  
 19 another 50 percent of mice in chamber B,  
 20 turn on ultrasonic pest repeller. Rats  
 21 and mice will be recorded at  
 22 twenty-four-hour interval for seven days?  
 23 A. There is a mistake, sorry. I  
 24 mean that should only be for ants, spiders  
 25 and roaches.

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1 Q. So you are saying this was	1 which chamber they were added to. To
2 incorrect?	2 avoid having to go through all the tests,
3 A. This is -- the protocol is	3 does that testimony remain constant for
4 incorrect here. I mean, not protocol.	4 all the tests that you produced and that
5 They wrote -- I guess they just took the	5 were run on the Bell + Howell repellents?
6 copy. They didn't update the mice with	6 A. Yes, but the amount of the pest
7 the ants spiders, roaches, but in the	7 dies was very minimum.
8 back, the result is correct. This is just	8 Q. To the extent that those pests
9 I think they took the protocol, but they	9 were added in the various tests in this
10 didn't update it.	10 case, you are unaware which chamber they
11 Q. Can you look at page 1554,	11 were added, to, correct?
12 please.	12 A. I was not involved in the
13 A. (Complying.)	13 testing so I was not aware.
14 Q. An individual signed their name	14 Q. I want to go over some of the
15 in what I believe is Chinese; is that	15 Qmann tests that we received, because I
16 correct? SGS inspector?	16 know you mentioned those earlier.
17 A. Yes, Mr. Li.	17 MR. KOPEL: I would like to
18 Q. So who is that? What is his	18 ask the court reporter to please mark
19 name?	19 as Exhibit 22, a document bearing
20 A. He is the technician or	20 Bates number BHH, J.L.C 001810 to 1815.
21 inspector who conduct this testing.	21 (Plaintiffs' Exhibit 22 was
22 Q. What is his first name?	22 marked for identification, as of this
23 A. Jihuan, it's Chinese name. Li	23 date.)
24 Jihuan.	24 Q. Do you have Exhibit 22?
25 Q. Li is his last name?	25 A. Yes.
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1 A. Yes, Li is the last name.	1 Q. Have you seen it before?
2 Q. Do you know what his background	2 A. Yes.
3 is?	3 Q. What is it?
4 A. I think I asked before. His	4 A. It's a pest test conducted by
5 background, he is an engineer. Engineer	5 Qmann in 2013 -- oh, no, sorry. The
6 and technician.	6 report. I said 2013. The report was --
7 Q. Do you know where he got a	7 the test was done 2010.
8 degree from?	8 Q. Where was this test performed?
9 A. No, I don't know.	9 A. It's in one of the buildings in
10 MR. KOPEL: Let's please just	10 Dunhuang, independent building. It's
11 go off the record.	11 actual space, so I was not aware of the --
12 THE VIDEOGRAPHER: We are off	12 its precise location.
13 the record at 3:18 p.m.	13 Q. Do you know if it's an
14 (Whereupon, a recess was	14 industrial type of space?
15 taken at this time.)	15 A. I have no idea. I don't know.
16 THE VIDEOGRAPHER: We are now	16 Q. So was the purpose of this test
17 going back on the record,	17 to see if the pest repeller would drive
18 approximately, 3:38 p.m., file number	18 the pests out from the 372-square foot
19 five.	19 area into the exit area?
20 BY MR. KOPEL:	20 A. Yes.
21 Q. Ms. Feuerstein, I think that you	21 Q. How many repellents were used?
22 testified earlier that with regards to one	22 A. One. Shows on the graph.
23 of the tests we looked at, that when pests	23 Q. That repeller remained
24 died, they might have been replaced mid	24 throughout the test in the 372 area and
25 experiment, but that you were not sure	25 never went into the exit area, correct?
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1 A. Correct.  
 2 Q. Do you see about halfway down  
 3 page 1812, it says, Testing Condition?  
 4 First there's a big heading that says,  
 5 Testing Condition and Requirement, and  
 6 then there is a subheading --  
 7 A. Yes.  
 8 Q. -- labeled Testing Condition.  
 9 Do you see that?  
 10 A. Yes, yes.  
 11 Q. Scratch that.  
 12 Do you see underneath that, it  
 13 says Testing Procedures, actually?  
 14 A. Yes.  
 15 Q. Do you see one, it says:  
 16 Pretest for three days with repeller was  
 17 off.  
 18 Do you see that?  
 19 A. Yes.  
 20 Q. A, it says: Put mice, spiders,  
 21 roaches into room seven at same time.  
 22 Do you see that?  
 23 A. Yes.  
 24 Q. Were the mice, spiders and  
 25 roaches in room seven at the same time?

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1 A. At the beginning of the test,  
 2 pretest, yes.  
 3 Q. Would you agree that spiders eat  
 4 roaches?  
 5 A. Sometimes, yes.  
 6 Q. Would you agree that mice could  
 7 eat spiders or roaches?  
 8 A. Yes.  
 9 Q. Do you think it was appropriate  
 10 that they put them in the same room at the  
 11 same time?  
 12 MR. WING: Object to form.  
 13 A. It could be, yes, but we did  
 14 record all the quantity of the spider and  
 15 roaches and we did mark if they're dead.  
 16 We did mark precisely how many were dead  
 17 during the testing and they did find the  
 18 body so it was not eaten.  
 19 Q. So do you think it was  
 20 appropriate to put them all in the same  
 21 room at the same time?  
 22 MR. WING: Same objection.  
 23 A. For this particular test, they  
 24 do it the same time.  
 25 Q. Are you done with your answer?

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1 A. I don't -- this one, I don't  
 2 recall, but they did mix the test for this  
 3 particular test.  
 4 Q. Do you think it was appropriate  
 5 to use mice --  
 6 A. Because this is a much bigger  
 7 area. This is not a chamber. That's why  
 8 they did it. This facility is much, much  
 9 bigger than the chambers.  
 10 Q. So you think that the 372 square  
 11 feet was sufficiently big enough to  
 12 prevent these pests from praying on one  
 13 another?  
 14 A. Yes.  
 15 Q. Do you have any basis for that?  
 16 A. Our understanding is the spider  
 17 and roaches probably crawl on the wall,  
 18 maybe on the floor, but mice remain on  
 19 the floor only and this is a bigger space.  
 20 That's why we mix the pest.  
 21 Q. So you think the spiders would  
 22 not eat the roaches because it's a bigger  
 23 space?  
 24 A. Less chance they would do that,  
 25 because of the space.

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1 Q. How big does the space need to  
 2 be to prevent spiders from eating roaches?  
 3 A. On average room for American  
 4 standards is 200-square foot and this is  
 5 much bigger. And we did not do the  
 6 smaller insect here. We did not do ants  
 7 and -- we did not do ants here, because  
 8 it's just -- simply, it's just too big an  
 9 area to supervise the ant's activity. But  
 10 I think for this particular test, it's  
 11 okay to mix the -- the pests together.  
 12 Q. Do you agree that one animal  
 13 praying on the other could affect the  
 14 movement of the two animals?  
 15 A. I did not think about this at  
 16 the time.  
 17 Q. But do you think that in general  
 18 that could affect movement of the animals?  
 19 A. It could be, if the area is very  
 20 tight and small.  
 21 Q. And it can't if it's a bigger  
 22 area?  
 23 A. It cannot, because spider  
 24 normally don't remain on the floor, on the  
 25 ground. They normally are on the wall.

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1 And mice doesn't have the ability to crawl  
2 on the wall. So this is okay.  
3 Q. Spider don't crawl on the floor;  
4 they only crawl on the walls?  
5 A. They do, but mostly they are on  
6 the wall.  
7 Q. And where do roaches crawl?  
8 A. Roaches everywhere. They are  
9 everywhere.  
10 Q. And spiders can eat roaches,  
11 right?  
12 A. Yes.  
13 Q. Do you think it's possible that  
14 some of the spiders might have seen some  
15 of the roaches and wanted to eat them?  
16 A. Could be, yes.  
17 Q. Do you see number two here, it  
18 says: Under nothing test for seven days  
19 or wait all pests move to exit area?  
20 A. Number two of which page?  
21 Q. I'm sorry, this is page 1812.  
22 A. Okay.  
23 Q. So it's just under where we were  
24 reading?  
25 A. Number two, okay.

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1 Q. So did the protocol initially  
2 call for a seven-day long test?  
3 A. When they say seven days, it's  
4 only referred to the seven days when the  
5 pest repeller was turned on. So they say  
6 undergoing test. When we mean undergoing  
7 means the machine is on.  
8 Q. Understood. So was the  
9 hypothesis that it would take seven days  
10 to work, but the protocol was for the test  
11 to keep going until all the animals were  
12 in the exit area?  
13 MR. WING: Object to form.  
14 A. I believe. And this is back to  
15 a few years ago, so I believe we fixed the  
16 date for seven days.  
17 Q. So you think it was only on for  
18 seven days?  
19 A. I'm sorry?  
20 Q. So were the devices only turned  
21 on for seven days?  
22 A. Yes.  
23 Q. Can you please turn to  
24 page 1813?  
25 A. (Complying.)

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1 Q. Do you see there is a graph here  
2 with the heading, 'testing record'?  
3 A. Yes.  
4 Q. Do you see there is pretest date  
5 one, pretest date two, pretest date three?  
6 A. Correct, correct.  
7 Q. And you see that there's nine  
8 days of which it was undergoing tests?  
9 A. Yes.  
10 Q. And then there's date 13, 14 and  
11 15, correct?  
12 A. Yes.  
13 Q. So does that refresh your  
14 recollection about how many days the  
15 devices were turned on?  
16 A. When we means -- when his remark  
17 here on testing days, when the report  
18 undergoing test, that means the machine  
19 was on. In the first three days and last  
20 three days, the machine were off.  
21 Q. Right, so there were nine days  
22 when the machines were on, correct?  
23 A. Correct.  
24 Q. So the protocol of this test  
25 called for the repellers to be turned on

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1 until such time as the pests were in the  
2 exit room and then they would be turned  
3 off, correct?  
4 A. I think when we submit them the  
5 protocol, we did request nine days plus  
6 six and six, so it means it's fifteen days  
7 in total.  
8 Q. So the original plan was to keep  
9 them on for nine days?  
10 A. Yes.  
11 Q. Can you turn back to page 1812,  
12 here. Do you see here under the heading  
13 Testing Procedures, number two says:  
14 Undergoing test for seven days or wait all  
15 pests move to exit area?  
16 A. Yes, I read that.  
17 Q. So does this mean that the plan  
18 was to either wait seven days or wait  
19 until pests were in the exit area,  
20 whichever was later?  
21 A. I -- I don't recall, but  
22 remember -- I remember when we asked him  
23 for quotation, he did say six days plus  
24 seven days plus -- sorry, three plus seven  
25 plus three. So they did quote based on

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1 this. So I don't think even they say wait  
 2 until all pests move to exit area, but  
 3 when he provide a quotation, it's based on  
 4 fifteen days.  
 5 Q. Hold on. I think -- I think  
 6 something you just said there might  
 7 have -- might have been confused.  
 8 The original quotation was for  
 9 three plus seven plus three?  
 10 A. Three plus nine plus three.  
 11 This is nine days.  
 12 Q. That was the quotation?  
 13 A. Yes.  
 14 Q. But the protocol called for the  
 15 testing to go on for either seven days or  
 16 for all pests to move to the exit area,  
 17 right?  
 18 A. I think this is a mistake. It's  
 19 nine days, not seven days. And I don't  
 20 recall where add is all pests move to exit  
 21 area.  
 22 Q. So you think the protocol  
 23 written on this report was incorrect?  
 24 A. They made a mistake on the  
 25 ongoing days. Actually, the test was

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1 longer than the marked here before.  
 2 Q. So there were additional days  
 3 that were not recorded in this report?  
 4 A. No, not I remember.  
 5 Q. Did you review this test report  
 6 after they sent it to you?  
 7 A. Yes.  
 8 Q. Did you ever tell them the  
 9 protocol you wrote here was incorrect?  
 10 A. No, I did not, because I did not  
 11 notice myself. Because normally, when  
 12 they send, for us most important is  
 13 testing result. It doesn't matter what  
 14 they say in the protocol, the test result  
 15 also shows the testing period and testing  
 16 time.  
 17 Q. Let's suppose that the protocol  
 18 you gave them called for nine days. Do  
 19 you suppose that considering that they  
 20 wrote here for seven days and wait all  
 21 pests move to exit area, do you suppose  
 22 that there's a good possibility that that  
 23 was the protocol that they used?  
 24 MR. WING: Object to form.  
 25 A. I don't know, because I wasn't

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1 involved with testing with Qmann.  
 2 Q. But you can't say for certain  
 3 that that wasn't the protocol that they  
 4 implemented, which is what was written on  
 5 here, correct?  
 6 A. I don't know.  
 7 Q. Looks like a lot of spiders and  
 8 roaches died over the course of this  
 9 experiment.  
 10 Would you agree with that?  
 11 A. Yes, because it was testing in  
 12 November and in China, November is very  
 13 cold and also in all the buildings in  
 14 China -- most the building in China don't  
 15 have heat systems, so it was cold during  
 16 the testing.  
 17 Q. So the roaches and spiders could  
 18 not withstand the cold?  
 19 MR. WING: Object to form.  
 20 A. That, I don't know. Depends.  
 21 It varies.  
 22 Q. So you don't know whether the  
 23 cold played a role in the mortality rate  
 24 of roaches and spiders?  
 25 A. The death? I don't know.

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1 Q. After seven days, it looks like  
 2 there were eleven roaches in room seven  
 3 and ten roaches in room eight.  
 4 Do you see that?  
 5 A. I'm sorry, which day?  
 6 Q. On day seven?  
 7 A. Undergoing test seven?  
 8 Q. Yes.  
 9 A. Roaches and spiders?  
 10 Q. Yes.  
 11 A. Yes.  
 12 Q. So do you agree that had this  
 13 test actually ended on day seven, there  
 14 would have been more roaches in the room  
 15 with the repeller than in the room  
 16 without?  
 17 A. I don't think it's a fact  
 18 because look at the previous two day, the  
 19 result was good.  
 20 Q. So what do you think caused the  
 21 roaches to move between the rooms, between  
 22 day six and day seven?  
 23 MR. WING: Object to form.  
 24 A. Under the influence of pest  
 25 repeller, I guess. I'm sorry, say your

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## D. Feuerstein

<p>1 question again?</p> <p>2 Q. You said -- you said -- you</p> <p>3 pointed out that on days five and six,</p> <p>4 there were more roaches in room eight,</p> <p>5 right, that's what you just pointed out to</p> <p>6 me, than in room seven?</p> <p>7 A. Yes.</p> <p>8 Q. And then on day seven, I suppose</p> <p>9 many of the roaches must have moved from</p> <p>10 room eight into room seven between days</p> <p>11 six and seven, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Why do you suppose that</p> <p>14 happened?</p> <p>15 A. I don't know. They are pests.</p> <p>16 I don't know.</p> <p>17 Q. And the same thing for mice on</p> <p>18 pretest date one. So I believe at the</p> <p>19 beginning of this experiment, all of the</p> <p>20 pests were put into room seven, correct?</p> <p>21 A. Yes.</p> <p>22 Q. But it looks like the majority</p> <p>23 of them immediately moved into room eight,</p> <p>24 right?</p> <p>25 A. Yes.</p>	<p>1 began, right?</p> <p>2 A. A few pieces. We add five more</p> <p>3 on day three, make it ten.</p> <p>4 Q. So I guess those were probably</p> <p>5 purchased from the pest supplier --</p> <p>6 A. Yes.</p> <p>7 Q. -- during the interim?</p> <p>8 Now, was this test you were</p> <p>9 referring to earlier when you talked about</p> <p>10 a test that was conducted in a home?</p> <p>11 A. Yes.</p> <p>12 Q. This was someone's home, or this</p> <p>13 was in a building?</p> <p>14 A. It's in a building. I don't</p> <p>15 know it's a home or it's apartment.</p> <p>16 Q. It might have been an apartment</p> <p>17 in an apartment building?</p> <p>18 A. Could be.</p> <p>19 Q. But you don't know if it was or</p> <p>20 not, right?</p> <p>21 A. It could be apartment. It could</p> <p>22 be dormitory, it could be an industrial</p> <p>23 building, but it's vacant, so...</p> <p>24 Q. Where was the bathroom in this</p> <p>25 apartment?</p>
<p>1 Q. And it's hard to understand. I</p> <p>2 mean, there is no reason that you know of</p> <p>3 for that immediate migration, correct?</p> <p>4 A. No, I don't know, but you see on</p> <p>5 day three, they came back.</p> <p>6 Q. And you don't know the reason</p> <p>7 for that either, right?</p> <p>8 A. No. I think without influence</p> <p>9 of ultrasonic, it just -- it's just</p> <p>10 roaming freely without any reason.</p> <p>11 Q. How many spiders were used in</p> <p>12 this experiment?</p> <p>13 A. Spider, ten. So it was ten</p> <p>14 spiders. But I don't -- first day's six,</p> <p>15 second day's four, but one dead. On the</p> <p>16 third day, they add five. So total ten.</p> <p>17 Q. Why did the test start out with</p> <p>18 six spiders?</p> <p>19 A. I guess -- I'm sure. I'm</p> <p>20 sure -- because from my experience the</p> <p>21 reason is when we buy the spiders a few</p> <p>22 days ahead, some won't stay alive, they</p> <p>23 might die even when we begin the testing.</p> <p>24 Q. So it looks like the majority of</p> <p>25 the spiders died before this test even</p>	<p>1 A. The bathroom? It doesn't show</p> <p>2 here. I don't know.</p> <p>3 Q. Wouldn't you agree that most</p> <p>4 apartments have bathrooms?</p> <p>5 A. In China -- yes, most</p> <p>6 apartments, but it's only showing two</p> <p>7 rooms, not a whole -- whole place.</p> <p>8 Q. So you think this might have</p> <p>9 been a section in an apartment?</p> <p>10 A. Section of apartment. We want</p> <p>11 to test in a room --</p> <p>12 Q. Sorry, go ahead.</p> <p>13 A. We want to test the pest in a</p> <p>14 room only.</p> <p>15 Q. Was there any furniture in this</p> <p>16 test?</p> <p>17 A. No.</p> <p>18 Q. There was no bed or carpeting,</p> <p>19 right?</p> <p>20 A. No.</p> <p>21 Q. Nobody lived in this apartment,</p> <p>22 right?</p> <p>23 A. No. It's vacant. That's why we</p> <p>24 won't be able to count that pest test.</p> <p>25 Q. Because no one would let you</p>

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## D. Feuerstein

1 bring these pests into their apartment,  
2 right?  
3 A. No. Because for fifteen days,  
4 the smell, it's unlivable, the condition.  
5 Q. Understood, thank you. You can  
6 put that to the side, please.  
7 A. (Complying.)  
8 MR. KOPEL: I am going to ask  
9 the court reporter to please mark as  
10 Exhibit 23 a document bearing Bates  
11 number BHH, LLC 712 to 717.  
12 (Plaintiffs' Exhibit 23 was  
13 marked for identification, as of this  
14 date.)  
15 Q. Now, you have Exhibit 23.  
16 A. Yes.  
17 Q. Have you seen it before?  
18 A. Yes.  
19 Q. What is it?  
20 A. It's a test report, pest test  
21 report done by Qmann in 2010.  
22 Q. This test was done at the same  
23 time as Exhibit 22, correct?  
24 A. Yes.  
25 Q. Was this conducted in the same

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1 space as Exhibit 22?  
2 A. Yes.  
3 Q. I guess it was different areas  
4 of the same space?  
5 A. Different, because they marked  
6 down the room number. This is one to six.  
7 And the other one is six to -- seven to  
8 eight.  
9 Q. There were walls between each  
10 room with holes in them, correct?  
11 A. Correct.  
12 Q. Now, is it fair to say that this  
13 is not the layout of some -- of a typical  
14 person's dwelling?  
15 A. You mean the main idea of this?  
16 Yeah, it looks more like to me it's more  
17 of a dormitory of factory workers, but  
18 it's empty. But you see there are  
19 connecting rooms.  
20 Q. Right. Although most  
21 dormitories wouldn't have a hole for pests  
22 to move freely?  
23 A. No. But we drew (sic) a hole.  
24 We do -- we do the layout.  
25 Q. So it might have been initially

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1 designed as a dormitory, but it was not  
2 being used as a dormitory, right?  
3 A. Correct.  
4 Q. And it was altered for  
5 purposes --  
6 A. It was altered with holes in  
7 between.  
8 Q. Right. And dormitories would  
9 typically have beds and furniture in them,  
10 you would expect, right?  
11 A. Right.  
12 Q. And here, as well, they put the  
13 mice, spiders and roaches into room three  
14 at the same time, right?  
15 A. Yes.  
16 Q. Can you please turn to page 715?  
17 A. (Complying.)  
18 Q. Do you see that for the spiders,  
19 the repellents were on for eight days?  
20 A. Yes.  
21 Q. Do you see for the roaches, the  
22 repellents were on for nine days?  
23 A. Yes.  
24 Q. Can you explain why that was  
25 done?

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1 A. I don't know.  
2 Q. Do you know who made the  
3 decision to test the different pests for  
4 different amount of times?  
5 A. Qmann.  
6 Q. You know what other types of  
7 testing Qmann had conducted in this space  
8 before it ran these tests?  
9 A. Any type of testing it did in  
10 this place before?  
11 Q. Yes, in the same space.  
12 A. No.  
13 Q. Okay, thanks. You can put that  
14 aside, please.  
15 A. (Complying.)  
16 MR. KOPEL: I ask the court  
17 reporter to please mark a document  
18 which lacks Bates numbers, which is a  
19 four-page document entitled, Test  
20 Report From the Qmann Quality Service  
21 Company.  
22 (Plaintiffs' Exhibit 24 was  
23 marked for identification, as of this  
24 date.)  
25 Q. Do you have Exhibit 24?

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1 A. Yes.  
 2 Q. Have you seen it before? And as  
 3 a spoiler, I am just going to confirm if  
 4 you believe this is the same test that we  
 5 just looked at.  
 6 A. Let me look. This is the same  
 7 report as Exhibit 22.  
 8 Q. Thank you. You can put that to  
 9 the side.  
 10 A. (Complying.) Okay.  
 11 Q. Did you look into getting the  
 12 pest repellents registered in Canada?  
 13 A. Yes.  
 14 Q. When was that?  
 15 A. I did -- I tried a few times,  
 16 then I discontinued because the  
 17 documentation was just too much. And also  
 18 they -- they don't responded to our  
 19 application, that is the way of Healthy  
 20 Canada, the government agency. They're  
 21 very nonresponsive.  
 22 Q. So they took too long to  
 23 respond?  
 24 A. They don't answer the call.  
 25 Everything has to be e-mail, and it took

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1 very long to respond.  
 2 Q. But did you formally withdraw an  
 3 application that you made?  
 4 A. I did not withdraw. I let the  
 5 letter of application dissolve, you know.  
 6 Q. So it was never complete, in  
 7 other words?  
 8 A. It was never complete in the  
 9 past. But this year we got Health Canada.  
 10 Q. So the product was registered in  
 11 Canada?  
 12 A. Yes. That's just recent. I  
 13 don't remember when. Sometime this year.  
 14 I don't remember the precise date.  
 15 MR. KOPEL: Scott, do you  
 16 know if those materials were produced  
 17 to me?  
 18 MR. WING: To the extent that  
 19 anything that we have would have been  
 20 produced to you. I don't know if  
 21 there is anything other than what was  
 22 in the production, in Jeffrey's  
 23 production. As far as any document,  
 24 anything confirming?  
 25 MR. KOPEL: Well, a copy of

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1 the application, a copy of the  
 2 documents received.  
 3 MR. WING: I believe that  
 4 was -- I believe that was in what was  
 5 produced to you, to my knowledge.  
 6 Q. Are the repellents now being sold  
 7 in Canada?  
 8 A. We recently just shipped one  
 9 shipment. I don't think it's reached  
 10 Canada yet.  
 11 MR. KOPEL: I ask the court  
 12 reporter to please mark as Exhibit 25  
 13 a document bearing Bates number BHH,  
 14 LLC 001356 to 13563.  
 15 (Exhibit 25 was marked for  
 16 identification, as of this date.)  
 17 Q. Do you have Exhibit 26?  
 18 A. Yes, but it's 25.  
 19 Q. Oh, excuse me. It's 25.  
 20 Do you have Exhibit 25?  
 21 A. Yes.  
 22 Q. Have you seen it before?  
 23 A. Yes.  
 24 Q. What is it?  
 25 A. It's regarding our discussion of

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1 presubmission request of pest repeller for  
 2 Canada.  
 3 Q. It's an e-mail from you to  
 4 Jeffrey Mishan regarding the registration  
 5 request, right?  
 6 A. Yes.  
 7 Q. And what is the attachment to  
 8 this e-mail?  
 9 A. It's the required -- it's the  
 10 procedure of some document required for  
 11 applying our registration in Canada.  
 12 Q. And did you submit all the  
 13 documents set forth -- in this document,  
 14 did you submit all those documents to  
 15 Canadian authorities?  
 16 A. I guess we were -- at this time,  
 17 2014, we did submit the presubmission  
 18 document. And because they require ten  
 19 months just to review the documentation,  
 20 so at that time I did not -- I think it  
 21 took too long and they were very  
 22 nonresponsive and I did not proceed  
 23 further. And we do it again in the -- we  
 24 do it -- we do it again last year.  
 25 Q. So last year, you submitted all

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1 of these documents?  
 2 A. Yes.  
 3 Q. Can you please turn to  
 4 page 1360.  
 5 A. (Complying.) Yes.  
 6 Q. Do you see at the bottom of the  
 7 page, there is a heading, DACO, and there  
 8 are some numbers, efficacy, small scale  
 9 trials? It's the last bolded underlined  
 10 heading on the page.  
 11 Do you see that?  
 12 A. Yes.  
 13 Q. Do you see it says here:  
 14 Information, e.g., use history, precedent  
 15 product, rationale's efficacy data must be  
 16 provided to demonstrate that the proposed  
 17 product when used according to label  
 18 directions adequately repels the proposed  
 19 pests.  
 20 Do you see that?  
 21 A. Yes.  
 22 Q. What documents were submitted in  
 23 response to this?  
 24 A. We this one -- we haven't  
 25 because we waited for ten months, they did

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1 not proceed, so we did not proceed for  
 2 this. According to this e-mail, at the  
 3 time we did not proceed because it was  
 4 just very confusing, all the documentation  
 5 they need.  
 6 Q. Were these documents submitted  
 7 to the authorities last year?  
 8 A. Yes, some of the new -- some of  
 9 the testing. Not testing. We should --  
 10 last year, we submit with the consultant  
 11 in Canada, because just like EPA, a lot of  
 12 times it's very hard to deal with a  
 13 government agency. So last year, a  
 14 consultant was helping us to do the  
 15 application.  
 16 Q. So in your application last  
 17 year, I understand you used a consultant,  
 18 did you produce to the Canadian  
 19 authorities documents of the sort that are  
 20 listed here that we just discussed?  
 21 A. I don't know what documentation  
 22 the consultant provided to the -- to  
 23 PNA -- Health Canada, that's the agency  
 24 who in charge of the application. I don't  
 25 know what document he provided.

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1 Q. Do you know what you provided to  
 2 him?  
 3 A. We do -- we did provide several  
 4 document, but I don't know what he  
 5 supplied to the agency.  
 6 Q. What documents did you give to  
 7 him?  
 8 A. We did, at the time, I think the  
 9 UL, register, approval, UL for the United  
 10 States, CUL is for Canada. So they first  
 11 asking for the CUL document, so we send it  
 12 and we also sent some testing and we also  
 13 sent some comparison testing with the  
 14 product already exist, only one pest  
 15 repeller got Canadian approval, so we also  
 16 do some comparison.  
 17 Q. Which pest repeller is that?  
 18 A. I don't remember the name. I  
 19 have the sample, but I don't recall the  
 20 name.  
 21 Q. Now, when you say comparison  
 22 testing, you did testing comparing the  
 23 sound frequencies that are emitted?  
 24 A. We sent it to the lab for  
 25 comparison.

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1 Q. What did they compare about the  
 2 two products?  
 3 A. It compare with the speaker, the  
 4 decibel, the frequency and the voltage and  
 5 wattage, et cetera.  
 6 Q. Did you send those documents to  
 7 Mr. Mishan?  
 8 A. I think I sent it direct to  
 9 the -- the -- the -- what do you call --  
 10 the agent who was doing, who was helping.  
 11 He know the procedure of Health Canada,  
 12 and I cc'd to Mr. Mishan.  
 13 Q. Can you turn to the next page,  
 14 1361?  
 15 A. (Complying.) Okay.  
 16 Q. Now, the second paragraph on the  
 17 page begins: Information available in the  
 18 public domain suggests that ultrasonic  
 19 devices have limited efficacy.  
 20 Do you see that?  
 21 A. Yes.  
 22 Q. Then it says: These types of  
 23 products would at best repel a small  
 24 number of rats or mice for a short time.  
 25 This publicly available information comes

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1 from a wide range of sources including the  
2 United States Federal Trade Commission,  
3 May 2001 investigation, handbook of pest  
4 control by Malice, 1997, the BC Ministry  
5 of Environment and Alberta Agriculture and  
6 Rural Development. The applicant will be  
7 required to address these concerns.

8 Do you see that?

9 A. I see that now. At the time I  
10 did not see that.

11 Q. Have you reviewed the sources  
12 cited in this paragraph as they relate to  
13 ultrasonic devices?

14 A. No, I did not review.

15 Q. None of them?

16 A. None of them.

17 Q. Did you -- so to your knowledge,  
18 you never supplied to your consultant any  
19 documents addressing these concerns,  
20 correct?

21 A. No.

22 Q. Were you aware that the Federal  
23 Trade Commission had a May 2001  
24 investigation regarding ultrasonic pest  
25 control devices?

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1 A. I heard about it from Team  
2 Products, but I never look at that.  
3 Q. When did they tell you about it?  
4 A. About the time? I don't know  
5 which year. It was the beginning of 2000  
6 or 2001 or 2003. I don't -- I -- I -- at  
7 the time I heard them mention it, but I  
8 did not take any look and I do not  
9 remember when did they tell me that.

10 Q. Did the FTC contact Team  
11 Products directly?

12 A. No, not that I know.

13 Q. Do you not know or you know that  
14 they didn't?

15 A. I don't know. I don't know if  
16 they've been contacted.

17 Q. What did you hear about it from  
18 the source at Team Products?

19 A. They mentioned -- they mentioned  
20 that the FTC's doing the investigation,  
21 but they are still selling the pest  
22 repeller for several years. So -- so I  
23 assume -- I did not ask, but I assume that  
24 it was okay that they keep selling it.

25 Q. Now, you suggested earlier that

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1 you might have seen the handbook of pest  
2 control by Malice.

3 A. I might.

4 Q. You might have seen that online?

5 A. I might, but I don't remember  
6 anything of this handbook.

7 Q. When you heard about the Federal  
8 Trade Commission investigation, did you  
9 feel concerned that maybe you should look  
10 at it in order to address their concerns?

11 A. No.

12 Q. Why not?

13 A. Because I think if any issue, I  
14 would be contacted.

15 Q. Do you see down the page there  
16 is a paragraph that starts with the words,  
17 efficacy data?

18 A. Yes.

19 Q. It says: Efficacy data  
20 generated under small cage conditions are  
21 not acceptable to support use claims due  
22 to limitations of confined to small cages,  
23 e.g. size, and the nature of the product,  
24 e.g. loss of intensity/sound pressure  
25 level, with increasing distance.

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1 Do you see that?

2 A. Yes.

3 Q. Now, do you understand that to  
4 mean that for the PRMA's purposes,  
5 efficacy data using small cages is  
6 insufficient?

7 A. I did not read this before, so I  
8 don't know.

9 Q. Sitting here today reading it,  
10 what is your understanding of that  
11 sentence?

12 MR. WING: Object to form.

13 You can answer.

14 Q. You can answer.

15 A. Just Canada has different  
16 standards, so I did not think of anything  
17 when they mentioned this.

18 Q. Okay.

19 A. Mm-hm.

20 Q. Sitting here today reading this  
21 sentence, what is your understanding of  
22 the meaning of this sentence?

23 MR. WING: Same objection.

24 A. Again, I just think they're very  
25 difficult because we are okay, we have no

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1 problem with the US EPA. Because this  
2 Health Canada, it's like US EPA. So then  
3 we don't have any problem here. So I just  
4 think -- because Health Canada, they're  
5 extremely -- not just for the pest device,  
6 they are also very strict about any of the  
7 pesticides. So I did nothing about  
8 anything at the time. And especially  
9 Canada is not a big market, so I really  
10 did not spend any time on this.

11 Q. Thank you for that response. I  
12 think that I'm asking something very  
13 specific.

14 A. Mm-hm.

15 Q. So I will ask that you please  
16 listen carefully to the question.

17 A. Okay.

18 Q. And try to answer directly.

19 My question is: There is a  
20 sentence here. Do you see the sentence  
21 that I referenced starting with the words  
22 "efficacy data"?

23 A. Yes.

24 Q. And I read it on the record?

25 What is your understanding of

1 trials?

2 A. I don't know.

3 Q. So you can't think of any reason  
4 that the PMRA -- it's the PMRA --

5 A. I think this is just their  
6 personal opinion. We did have -- for  
7 example, our current cage design, it's  
8 actually recommended by Michigan State --  
9 the university. And in the lab  
10 environment, normally you can only do  
11 small cage.

12 Q. Recommendations for Michigan  
13 University were made directly to

14 Intellitree, right?

15 A. Yes.

16 Q. They were never published,  
17 correct?

18 A. No.

19 Q. Field trial or laboratory trials  
20 which simulate realistic conditions must  
21 be conducted.

22 Do you see that sentence, there,  
23 as well?

24 A. Yes.

25 Q. Do you have any understanding of

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1 what that sentence means?

2 MR. WING: Same objection.

3 A. I just think this is Health  
4 Canada's requirement. It doesn't  
5 represent the -- we did do -- we did do  
6 testing in an actual dormitory apartment.

7 Q. I appreciate what you are  
8 saying. And I don't want to keep you here  
9 all night, but -- and I hate to ask the  
10 same question again, but I don't think you  
11 are answering it.

12 Can you please tell me what you  
13 think that sentence means?

14 A. It means that Canada government,  
15 they require field test for pest  
16 repellents.

17 Q. And that's the second sentence  
18 here, right?

19 A. Right.

20 Q. The first sentence, what does  
21 that sentence mean?

22 A. Small cage, condition. They  
23 don't accept it.

24 Q. Do you have any understanding of  
25 why they might not accept small cage

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1 why the Canadian authorities might like to  
2 see field trials of device efficacy?

3 MR. WING: Object to form.

4 Q. You can answer.

5 A. I guess they just -- I don't  
6 know, I'm not in that their position, I  
7 can't tell, I guess they just wanted to  
8 see field trial before they determined.

9 Q. Would you agree that a field  
10 trial would be more reliable than a  
11 laboratory trial?

12 MR. WING: Object to form.

13 A. I can't tell. I can't say.

14 Because we -- our professional surveys is  
15 not for entire house. We targeting  
16 specific every size room. So I think the  
17 testing we have done -- we have been done  
18 is sufficient.

19 Q. You said -- oh, I understand  
20 what you are saying. But you never  
21 conducted any field trials, right?

22 A. I think the Qmann's one is very  
23 close to the field trial.

24 Q. What is your understanding of  
25 what a field trial is?

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54 (Pages 210 - 213)

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1 A. Field trial is conduct in a real  
2 environment outside of the laboratory,  
3 small cage.  
4 Q. And we agreed before that the  
5 Qmann test was conducted in a space that  
6 was altered for purposes of the  
7 experiment, right?  
8 MR. WING: Object to form.  
9 A. We do very small alteration, we  
10 only drill holes, so for the pests to be  
11 able to pass around. We didn't alter  
12 anything else.  
13 Q. Are dormitory rooms usually  
14 devoid of furniture?  
15 A. You know what? I don't know if  
16 there were any furniture inside. I don't  
17 know. They didn't mention yes or no in  
18 the report.  
19 Q. You don't know of any  
20 evidence -- sorry to interrupt you.  
21 A. Sorry. I don't know whether the  
22 furniture was inside during the test. I  
23 know it was vacant. Means no workers  
24 lived there, but wasn't hundred percent it  
25 was vacant without any furniture. But

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1 normally, they have bunkbed and some  
2 cabinets for the workers clothes. But for  
3 this particular case, I wasn't sure.  
4 Q. The pests were placed into the  
5 setting for purposes of the experiment in  
6 the Qmann trials, right?  
7 A. Yes.  
8 Q. So would you agree that's not  
9 how a field trial works?  
10 MR. WING: Object to form.  
11 A. I think that's a field trial for  
12 me.  
13 Q. So you think it simulates real  
14 life conditions to place pests in a room,  
15 to place spiders, ants, mice, roaches, in  
16 a room?  
17 MR. WING: Objection. Asked  
18 and answered.  
19 Q. You can answer.  
20 THE WITNESS: I can answer?  
21 A. I think that's real environment.  
22 In a normal household, you also mix pests.  
23 Q. Were any of the tests you ran  
24 designed to test the efficacy of the  
25 repellents at different angles?

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1 A. Different angle, you mean how we  
2 position the pest repeller?  
3 Q. Correct.  
4 A. You can place with different  
5 angles because they are block in, so it  
6 has to be straight blocking into the wall,  
7 so you can't have different angles.  
8 Q. But you could have a position of  
9 the pest repeller, perhaps, at one side of  
10 the room, at another side of the room?  
11 A. Oh, right. So I'm not sure.  
12 I'm not sure if every one is different  
13 with different angles.  
14 Q. But you can't -- you can't list  
15 for me right now any test that --  
16 A. Right.  
17 Q. -- that tested at different  
18 angles, right?  
19 A. Yes. It's testing the different  
20 chambers. So they could put in a  
21 different corner, different wall.  
22 Q. Did any of the tests measure the  
23 strength and frequency of the sound at  
24 different distances from the repeller?  
25 A. For efficacy test?

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1 Q. Well, let's start with any  
2 tests, period.  
3 A. For the test that we run, we  
4 did -- that's a separate test. For this,  
5 this is just for the efficiency. So we  
6 don't measure the decibel. We measure the  
7 result.  
8 Q. Okay.  
9 A. Right. So we do have other test  
10 report shows the -- the decibel -- and I'm  
11 not sure whether they mention the  
12 efficiency in the report. So we do have  
13 report that shows how much is a decibel of  
14 test repellents.  
15 Q. But you haven't measured how  
16 that diminishes with space?  
17 A. They did not mention the  
18 diminish, when it gets further, no. We  
19 just test the decibel in a -- in a lab  
20 environment. This test was done by  
21 professional labs.  
22 Q. Have any of the tests you've  
23 produced or Mr. Mishan has produced, have  
24 any of them tested the proposed devices  
25 for at least one month?

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55 (Pages 214 - 217)

## D. Feuerstein

1 A. Over the period of one month?  
 2 Q. Yes.  
 3 A. No.  
 4 Q. Have you ever conducted  
 5 statistical analyses of the data collected  
 6 from the tests?  
 7 A. Sometimes when I send a report,  
 8 I will attach an explanation page just  
 9 based on the results, I explain how to  
 10 look at the figures, how to look at the  
 11 result. So I did provide that, but that's  
 12 a separate page from the test report.  
 13 Q. So you draft a page based on  
 14 your understanding of the test, correct?  
 15 A. Yes. I think that would help,  
 16 Mr. Mishan, easier to understand. He  
 17 understand because he has read a lot of  
 18 test reports, but I always draft --  
 19 Q. So it's easier for him to  
 20 understand?  
 21 A. Yes, yes.  
 22 Q. Do you include any analyses of  
 23 whether pest populations or differences in  
 24 pest populations are statistically  
 25 significant or not?

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1 A. No, I did not do that.  
 2 Q. Do you see on page 1362, in the  
 3 paragraph following the third bullet  
 4 point, the second sentence reads: Studies  
 5 must be conducted under sufficient pest  
 6 pressure to generate meaningful results.  
 7 Do you see that?  
 8 A. I see that now, yes.  
 9 Q. Do you have any understanding of  
 10 what that means?  
 11 MR. WING: Object to form.  
 12 A. Pest pressure, I don't  
 13 understand what that means, pest pressure.  
 14 Q. Did you read through this  
 15 document at the time when you sent it to  
 16 Mr. Mishan?  
 17 A. No, I did not read through it,  
 18 because I was just thinking -- PMR were  
 19 kind of difficult to deal with and we were  
 20 very busy. So I kind of just dropped the  
 21 case into 2012.  
 22 Q. If you wanted to gain a better  
 23 understanding of the term pest pressure or  
 24 other terms used herein, would it be fair  
 25 to say that you could do that if you

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1 consulted with someone with expertise in  
 2 the field of pest management?  
 3 MR. WING: Object to form.  
 4 A. I did work with somebody in  
 5 Canada at the time, but she was very  
 6 inexperienced about pests to get the  
 7 approval from PMR. So to work with  
 8 someone who is not very efficient and plus  
 9 the complication of the documentation, so  
 10 I dropped the case.  
 11 Q. Okay.  
 12 A. Mm-hm.  
 13 Q. You think it might have been  
 14 helpful to --  
 15 A. Might have been helpful.  
 16 Q. -- to consult with someone in  
 17 the field of pest management?  
 18 A. Correct, correct. Every time,  
 19 we did not have someone who is good  
 20 enough.  
 21 MR. KOPEL: Let's please go  
 22 off the record.  
 23 THE VIDEOGRAPHER: We are off  
 24 the record now at 4:29 p.m.  
 25 (Whereupon, a recess was

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1 taken at this time.)  
 2 THE VIDEOGRAPHER: This is  
 3 the beginning of file six. We are now  
 4 going back on the record at,  
 5 approximately, 4:36 p.m.  
 6 BY MR. KOPEL:  
 7 Q. Ms. Feuerstein, I want to -- I  
 8 think we covered this earlier, but just  
 9 for the sake of completion, I just want to  
 10 make sure we are clear about your  
 11 educational background.  
 12 A. Yes.  
 13 Q. You said you have a degree in  
 14 international trade, correct?  
 15 A. Correct.  
 16 Q. Do you have any sort of training  
 17 in pest management?  
 18 A. I don't have training in pest  
 19 management.  
 20 Q. Do you have any training in --  
 21 regarding ultrasonic sound?  
 22 A. I don't have educational  
 23 training on ultrasonic sound, but in this  
 24 business for eighteen-plus years, I have  
 25 done extensive research on ultrasonic

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D. Feuerstein

1 sound.

2 Q. But you don't have any training  
3 in the field of ultrasonic sound?

4 A. I don't have training in the  
5 school, no.

6 Q. And you don't have any sort of  
7 scientific or engineering degree?

8 A. No.

9 Q. Ms. Feuerstein, that's all I've  
10 got. Thank you very much for coming in.

11 A. Thank you for your time.

12 Q. And have a nice evening.

13 A. You, too, thanks so much.

14 THE VIDEOGRAPHER: We are now  
15 going off the record at,  
16 approximately, 4:37 p.m.  
17 [TIME NOTED: 4:37 p.m.]

18

19

20

21

22 DEBBIE FEUERSTEIN

23

24

25

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1 CERTIFICATION

2

3 I, JAMIE ANN STANTON, a Notary Public,  
4 do here hereby certify that the foregoing  
5 witness, DEBBIE FEUERSTEIN, was duly sworn  
6 on the date indicated, and that the  
7 foregoing is a true and accurate  
8 transcription of my stenographic notes.

9 I further certify that I am not  
10 employed by nor related to any parties to  
11 this action.

12

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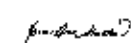
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JAMIE ANN STANTON

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**[intellitec - kopel]**

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[kopel - lynn]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and  
(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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